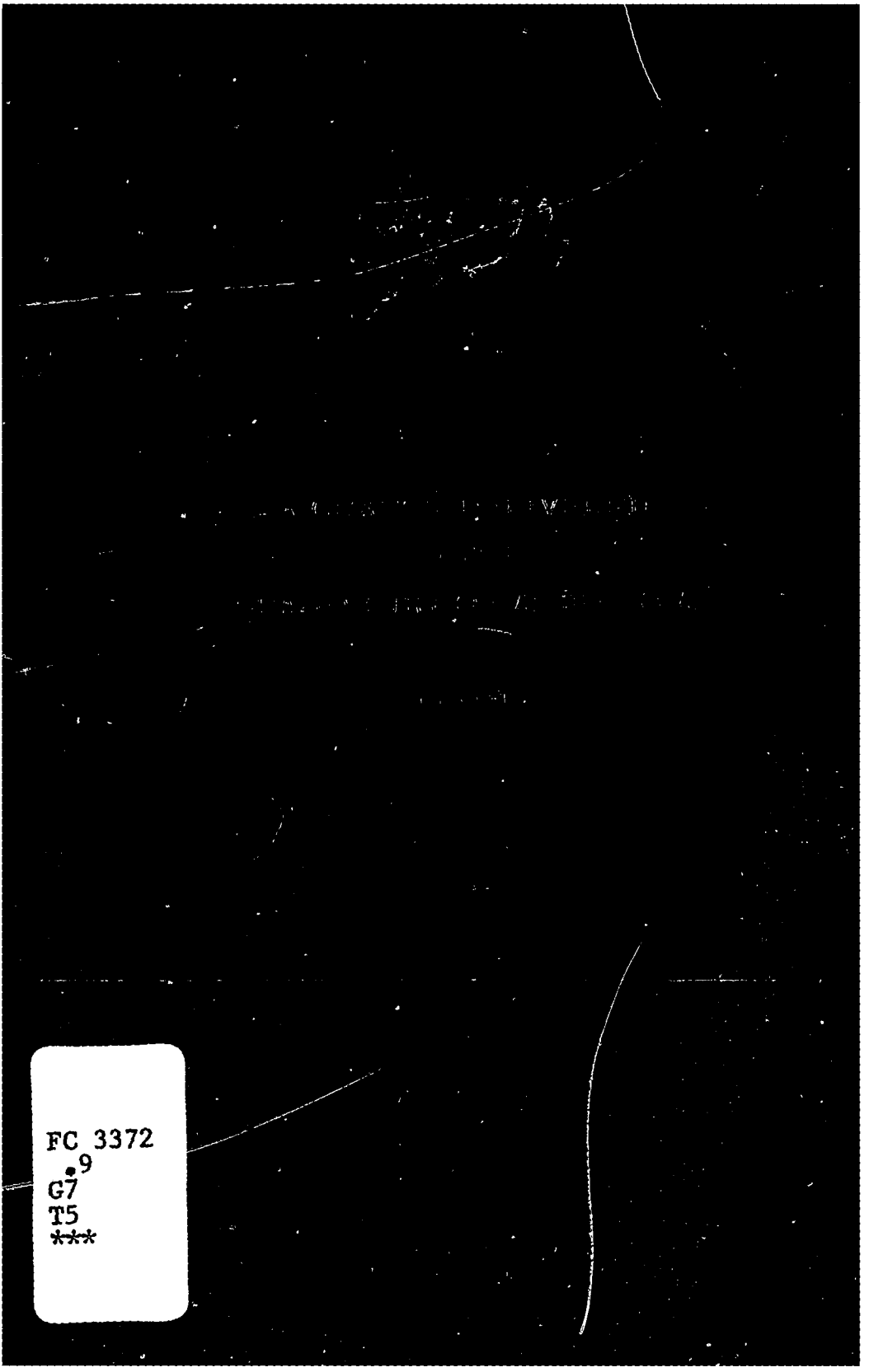

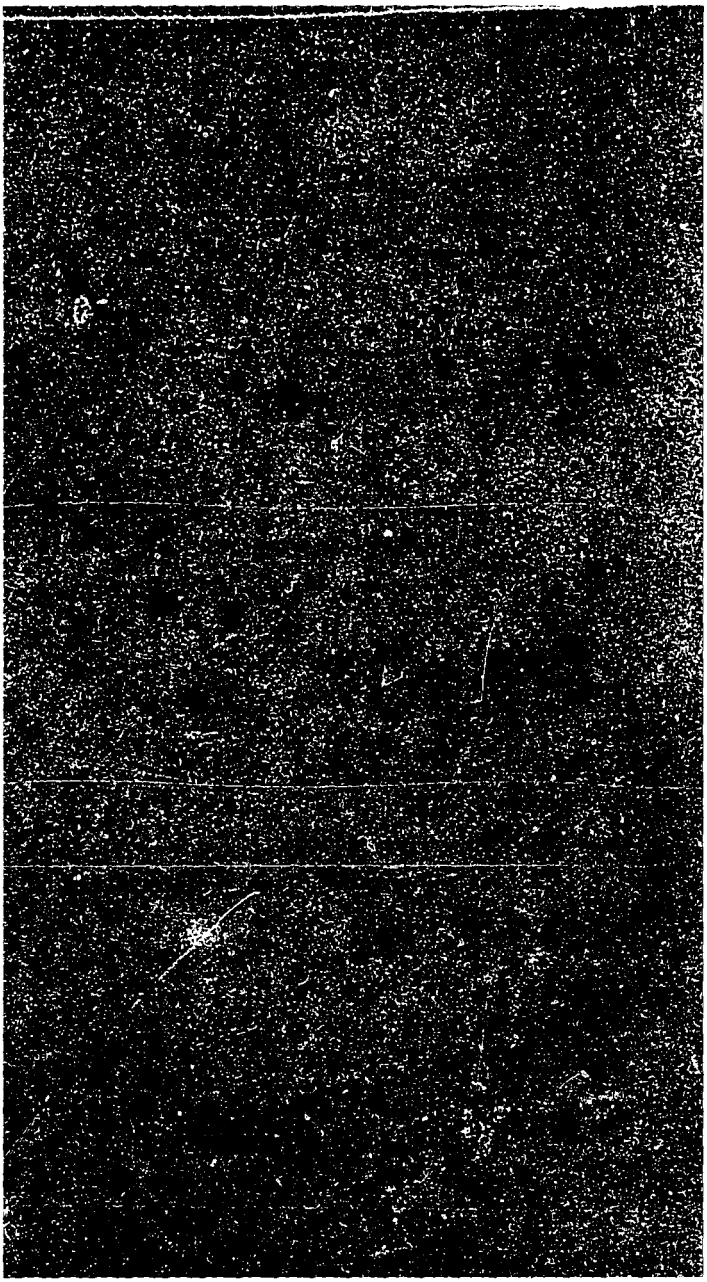

A

CHARGE

DELIVERED TO

THE GRAND JURY

OF ASSINIBOIA,

20th February, 1845.

BY

ADAM THOM, Esq.,

RECORDER OF RUPERT'S LAND.

LONDON:

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1848.

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CHARGE.

GENTLEMEN OF THE GRAND JURY,

1. IN that country, from which we derive our laws, grand jurors are never permitted to enter on their duty without being specially reminded of its nature and importance. If this precaution be expedient in England, where respectable individuals are so frequently required to act as the pioneers of criminal justice, it must be more than expedient in Rupert's Land, inasmuch as grand juries, besides being so seldom summoned to take part in our judicial proceedings, are altogether unknown to the jurisprudence of that country, whence many, if not most, of you, in common with a majority of the bench, derive your origin or education. In Scotland, the country to which I have just alluded, the grand jury's essential business of preferring an accusation before those, who are to ascertain its truth or its falsehood, is performed by one of the highest officers of the government, who may, in general terms, be said to resemble the attorney-general of England.

2. But this peculiarity of the Law of Scotland, over and above furnishing me with a special reason for more than ordinary fullness of explanation, cannot fail to impress you with a solemn and grateful sense of the confiding liberality of the Law of England; which, while it actually screens the collective community from the possibility of official oppression, virtually raises its individual members to the level of one, who is more decidedly superior to me in knowledge and in station, than I am to the least intelligent or the humblest of yourselves.

3. Pondering, therefore, on the dignity of your position, and on the responsibility of my own, and feeling anxious both to protect myself against misconception and to instruct you with precision, I have resolved to speak from this paper, and to hand the same, for your more mature deliberation, to your able and experienced foreman. In other lands, such expositions of law and judicature almost invariably reach the general ear in all the genuineness of their original force; and, though the institutions of this remote corner of the earth cannot vindicate themselves with a similar voice; yet they undoubtedly possess, in the utmost possible publicity, their best armour of defence against ignorant or interested misrepresentations.

4. Upwards of five years ago, when I had the honor of addressing, for the first and last time, so numerous and influential a body of my fellow-citizens, I strictly confined myself, as perhaps best became a stranger, to the mere discussion of the single case that was to be considered,—a discussion, by-the-bye, so extensive and so intricate as in itself to demand all the time that could conveniently be spared, either by the community or by the Court. Now, however, I propose to follow a more comprehensive course; and, though I am happy thus publicly to acknowledge the attention and patience of preceding juries; yet I must, in candour, bespeak on your part a somewhat unusual share of patience and attention, relying on your having brought to the investigation of a fellow-creature's premature death, a self-denying disregard of any temporary inconvenience.

5. To give a summary of what I shall hereafter offer in detail, you wield, as a grand jury, two branches of authority, the power of indicting under such bills as may be submitted to you, and the power of presenting of your own accord any breaches, whether direct or indirect, whether essential or collateral, of the criminal law: and, as the case of alleged homicide which has called you together will, from the national origin of both parties, involve a nice and difficult inquiry as to

the extent of our legal control over pure Indians, I shall lay before you, at considerable length, a preliminary sketch of our general jurisdiction, civil as well as criminal, as the best, or, perhaps, the only, means of expounding and illustrating my views of the special jurisdiction in question.

6. If we had to consider merely our jurisdiction in the abstract, or if we held under a written deed of delegation any specific jurisdiction, that was not repugnant to the fundamental principles of justice, we should, in either case, be satisfied with knowing, that we derived our authority from the actual rulers of the country, whether they might be its rightful rulers or not. But when, in the absence of any definite commission, we are constrained to betake ourselves for minute information to the letters patent of Charles the Second, we have an immediate interest in the validity of that document, as being, in such a case, our only guide in ascertaining our specific jurisdiction, and our only defender in justifying the same. If the Charter be good, then our safe course is to interpret it well; but, if the Charter be bad, the best interpretation cannot shield us from the penal consequences of usurping the judicial control of property, liberty, and life.

7. Down to the date of the Charter, the crown of England confessedly possessed, and habitually exercised, the right of exclusively granting foreign trade and colonial dominion to private individuals or to public corporations without the consent of the houses of parliament. Now, though the parliament subsequently limited this high prerogative; yet it did so, not by formally repealing it, but merely by practically superseding it; thus tacitly admitting the validity of all its preceding results. But the royal grants in question were repeatedly fortified with parliamentary sanction in the most express and positive terms, so as to be rendered valid, even if originally defective; and perhaps no document was ever more frequently confirmed by the paramount authorities of any country than the Charter of Prince Rupert and his distinguished associates.

8. By 7 & 8 Will. 3, ch. 22, the proprietary plantations, such as Rupert's Land, were regulated in such terms as expressly involved a parliamentary recognition of all royal grants of colonial dominion. By 6 Ann, ch. 37,—a statute which proposed to facilitate the colonial trade—all the estates, rights, and privileges of the Hudson's Bay Company were declared to be saved, notwithstanding the tenor and tendency of the Act itself; so that here was a general recognition of the whole Charter with a special reference to its commercial provisions. By 18 Geo. 2, ch. 17, a considerable reward was offered for the discovery of a north-west passage through Hudson's Straits; and, even against this possible instance of nominal encroachment, the Charter of Rupert's Land was again saved, in the same words, and with at least the same effect,—a saving the more remarkable, inasmuch as it was almost entirely superfluous. By 14 Geo. 3, ch. 83, the northern boundary of Canada was to be southern boundary of "the territory granted" to the Hudson's Bay Company, the parliamentary province merely claiming to the northward what the letter of the royal grant, without regard to actual possession, might leave unappropriated. By 1 & 2 Geo. 4, ch. 66, the Charter of Rupert's Land was twice expressly recognised: its first section, though its single object was to prevent competition, yet confined the licence to the country not covered by the Charter; thus positively saving, as in the last-mentioned case, the extent of territory, and negatively assuming the right of trade as an already existing security against the dreaded evil; and the closing section of the Act revived, in the most emphatic language, the chartered jurisdiction which one of the intermediate sections had extinguished. But this statute, when taken in connexion with the statute which it amended, would clearly show that the royal Charter, so far from needing a parliamentary recognition, could stand even against a parliamentary attack, unless made in a form more pointed than that of inference and implication. Though 43 Geo. 3, ch. 138,

extended the jurisdiction of the Canadas over the adjacent territories as having no jurisdiction of their own, yet Rupert's Land, comprising, by-the-bye, the only adjacent territories, was considered to be exempted, inasmuch as it had the jurisdiction of which the statute presumed the absence; and this very opinion, after being promulgated by parliament itself in 1 & 2 Geo. 4, ch. 66, was first remedied and then left to its operation, as already seen, by that same statute.

9. But the royal charter has been recognized by public documents, more important in their effect, though, perhaps, less obligatory in their character, than Acts of Parliament. In the reign of Queen Anne, the Treaty of Utrecht transferred from France to England all right and title to the chartered territories, French Canada and French Louisiana; thus accepting the Charter as the arbiter of their northern boundaries, and rendering to its limits the very homage which English Canada and the Indian territories still render to the same. Again, in 1794, the Treaty of amity, commerce, and navigation between Great Britain and the United States, permitted the subjects and citizens of the respective powers to cross at pleasure the international boundary, and, under certain restrictions, to trade on either side of the same; but though it based the stipulation on the highest possible ground, the expediency of promoting international harmony; yet it held sacred the borders of the chartered territories, not by any clause introductory of a new privilege, but merely by a parenthesis declaratory of an old one.

10. Thus has the document, from which this Court must draw any definite notion of its jurisdiction, been placed on the deepest and broadest foundations, even if its inherent validity, were a subject of reasonable and honest doubt. It has been sanctioned by every variety of parliament, by the Parliament of England, by the Parliament of England and Scotland, and by the Parliament of England, Scotland and Ireland; it has been sanctioned by five of the eight intermediate predecessors

of Victoria; it has been sanctioned with respect to its exclusive trade, with respect to its local jurisdiction, and with respect to its geographical extent; it has been sanctioned as against individual subjects and as against individual aliens; it has been sanctioned as against neighbouring colonies, and as against foreign states; and, what is more than all this, it has been proved to be independent of any sanction by triumphing, on merely technical grounds, over a direct attack of the supreme authority of the empire.

11. Having thus shown that the letters patent of Charles the Second may be safely adopted as a guide, let me now proceed to interrogate them as to the nature of our jurisdiction. On the sixteenth page of the printed copy I find these applicable words:—

* * * "The Governor and his Council of the several and "respective places where the said Company shall have plan- "tations, forts, factories, colonies, or places of trade, within "any of the countries, lands, or territories hereby granted, "may have power to judge all persons belonging to the said "Governor and Company, or that shall live under them, in "all causes, whether civil or criminal, according to the laws "of this kingdom, and to execute justice accordingly. And, "in case any crime or misdemeanor shall be committed in any "of the said Company's plantations, forts, factories, or places "of trade within the limits aforesaid, where judicature cannot "be executed for want of a Governor and Council there, then "in such case it shall and may be lawful for the Chief Factor "of that place and his Council to transmit the party, together "with the offence, to such other plantation, factory, or fort, "where there shall be a Governor and Council, where justice "may be executed." * *

12. This passage obviously presents four separate and distinct topics of discussion, the rule of decision, the geographical range, the standing of the parties in any cause, and the constitution of the tribunal.

13. With regard to the rule of decision, the express provision of the Charter is little better than superfluous: for, according to the fundamental principles of colonial settlements, Rupert's Land, unless its Charter had positively determined the contrary, would have been subjected to "the laws of this kingdom," as existing at the time of the grant. Our principal rule of decision, therefore, is the law of England, of 2nd May, 1670; or, to speak more correctly, such portions of the same as might be adapted to the condition of the country. On a point of such fundamental and vital interest, I prefer relying on the opinion of certain parliamentary commissioners, as quoted by an able writer:

"In the case of an uninhabited country, discovered and "planted by English subjects, all the English laws then in "being, which were the birthright of every subject, are imme-"diately there in force. But this doctrine must be understood "with many and great restrictions. Such colonists carry with "them only so much of the English law as is applicable to "their own situation, and the condition of an infant colony. "Thus they acknowledge as in force, 1st, the Common Law of "England; 2nd, such Acts of Parliament as passed before the "settlement of their colony, and are applicable to its condition. "Under the qualification contained in the last part of the rule, "many entire exceptions have been admitted. Of this, the "bankrupt and poor laws; the laws of police; tithes; and the "mortmain acts, furnish apt and familiar examples. Of acts "passed subsequently to its settlement, such only are consi-"dered to affect a settled or chartered colony as have that pos-"session expressly named, or virtually included in them. But "all navigation acts, acts of revenue and trade, and acts re-"specting shipping are obligatory, though the colonies are not "named in them."

14. On one most important point, however, the closing sentence of this quotation is not applicable to this country. In practice, whatever may be the theory of the case, Rupert's

Land, differing, as it does, in government and constitution from every other dependency of the United Kingdom, is exempted from the operation not only of revenue-laws in general, but even of those revenue-laws in particular which expressly affect the colonial possessions of the empire in this quarter of the globe. At this moment, if we stood in the same political relation to the mother-country as our brethren of Canada, our imports from the United States would be burdened with duties heavy in themselves, and liable to be made more heavy by the imperative addition of all such duties as are, or may hereafter be, levied on our imports from the United Kingdom. To offer instances of the advantages of our peculiar position,—advantages of a kind to be appreciated even by the least thoughtful members of the community,—coffee would pay five shillings a cwt., being, I apprehend, at least three times the amount of our municipal duty; raw sugar would pay the same, being, as nearly as possible, five times the amount of our municipal duty, even on refined sugar; refined sugar would pay twenty *per cent.* not on the invoice price, but on the local value; and cottons, stoves, and tobacco would pay seven *per cent.*, to be similarly estimated,—one and all of these duties being to be paid over and above the existing tax, or any modification of the same.

15. But to return to the quoted passage—in the face of authority so high and so explicit, the vague generality of the Charter can never be permitted to introduce the English laws of to-day for the present and of to-morrow for the future; nor, in this case, is expediency repugnant to authority: for, surely a fixed rule, which may from time to time be modified to suit our condition, is more convenient than a rule ever varying to suit the condition of others, but never to be varied to suit that of ourselves.

16. But the law of England of 2nd May, 1670, is not our only rule of decision. To pass without further notice the obvious addition of the municipal regulations, the Charter furnishes a subsidiary rule of its own; or rather, the Charter is,

with respect to Rupert's Land, one of "the laws of this kingdom" of 2nd May, 1670, and as such, must be judicially noticed without being pleaded by the interested parties. If, for instance, any suit that might involve an infringement of the chartered privileges were to arise, we should be bound to inquire whether the infringement in question had been legalized by the requisite license, and, according to the result of such inquiry, to reject the suit or to decide it.

17. To pass from the rule of decision to the geographical range, I must endeavour to trace the limits not merely of the district of Assiniboia, as being the immediate object of our jurisdiction, but also of Rupert's Land, as containing the other districts, which, for the purposes of criminal justice, are indirectly subjected to this tribunal, as the only resident Court of Governor and Council.

18. Assiniboia is the common name of two very different districts, the judicial district and the municipal. In the Honorable Company's resolutions of 1839, for the appointment of a governor, a council, and two sheriffs, the judicial district is described to be such portion of Lord Selkirk's original grant as may lie within Her Majesty's dominions; whereas, in the local regulations of 1841, the municipal district is limited to a circle of a hundred miles in diameter, with the forks as a centre. The boundary of the former, which alone requires to be more particularly defined, begins at the Lake of the Woods on the international line; follows the main stream of the Winipeg River; crosses the Winipeg Lake so as to reach land in the latitude of fifty-two degrees and a half; travels due west to the Lake Winipegos; crosses the same so as again to reach land in the latitude of fifty-two degrees; once more runs due west till it meets the most distant waters of the Assiniboine in that direction; then proceeds due south, to the southern border of Rupert's Land; and lastly, along the same, returns to its original point of departure. Of the judicial district thus defined, the municipal district forms hardly one-eighth part; and it would

have been manifestly absurd and preposterous to extend our local regulations over so wide and wild a surface. In some respects, such extension would have been as unjust and presumptuous, as it would have been preposterous and absurd. To take as the most tangible instance, the import-duty—the contemplation of the larger district would have taxed the outfits of at least four distant posts, Fort Alexander, on Winipeg River, Manitoba House on Manitoba Lake, Fort Pelly on Assiniboine River, and Fort Ellice on Beaver Creek; and even if such outfits had been specially excepted, the contemplation of the larger district, inasmuch as it would touch, as already seen, the international boundary, would have appeared to set aside the chartered corporation's essential privilege of closing or opening the external trade of Rupert's Land. As the matter actually stands, the local regulation merely provides that all articles, which are not expressly exempted, shall be liable to pay toll on entering the smaller district, from whatever point of the compass, whether within Rupert's Land or without, they may have originally come, and by whatever means, whether legal or illegal, they may have reached the circular boundary of local taxation; and the actual receipt of such toll on the part of the municipal authorities, of course, confers no right whatever, whether retrospective or prospective, to the prejudice of third parties.

19. Having thus defined the district of our immediate jurisdiction, and distinguished it from another district of the same name, I shall now enter on the difficult and interesting task of defining in mass those districts, which, for the purposes of criminal justice, are indirectly placed under our superintendence. The interior boundary of the chartered territories undeniably coincides with all the remotest heights of land, that send down water to meet the maritime boundary of the same. But the maritime limit, on which all the other limits thus depend, seems to me to be much less certain than is generally imagined. Some lawyers, to whom I could not without imper-

tinence even acknowledge myself to be immeasurably inferior, have, I believe, offered the opinion, that the maritime limit coincides with the coasts of Hudson's Straits and Hudson's Bay, so as to exclude from Rupert's Land, all that lies beyond Portage La Loche. But the Charter, with express reference to the anxiously desired discovery of a north-west passage between the Atlantic and the Pacific, comprised all that might lie in any latitude within the entrance of Hudson's Straits; the corresponding condition of any longitude being doubtless omitted, as necessarily involved in such express reference to an indefinite extent of westerly exploration, or as necessarily involved even in the very words of the provision itself. Now, in this view of the case, Rupert's Land would clearly advance westward, step for step, with the progress of maritime discovery; being, at the date of the opinion aforesaid, precisely what the lawyers in question held it to be; but having, since that time, carried its maritime boundary to the north-east angle of Russian America, and that, in a great measure, through the exertions of its own adopted children. This palpable truth has perhaps been kept out of sight by a looseness of phraseology, to which the Charter itself has given rise,—"The Governor and Company of Adventurers of England, trading into Hudson's Bay," being naturally abbreviated into Hudson's Bay Company, and Hudson's Bay Company's Territories, being as naturally abbreviated into Hudson's Bay Territories. Had the corporation been described, as it might more precisely have been, as trading into Hudson's Straits, the same abbreviations would have been equally probable in themselves, but not equally liable to the same inferential misapplication. But the chartered territories, as thus defined, have been considerably modified by Treaties, the international boundary from Canada to the Rocky Mountains, generally lying to the north of the height of land; and if, at any point, such international boundary lies to the south of the same, as it actually does lie at the south-west angle of our judicial district, there must exist a corner of the

empire, which falls not within our own jurisdiction, but within the jurisdiction of the Indian territories.

20. Of the two imperial statutes, which extend the jurisdiction of the Canadas over the Indian territories, neither the one nor the other appears to have barred the growing operation of the Charter. The 43 Geo. 3, ch. 138, might, indeed, possibly claim a concurrent authority with ourselves beyond Portage La Loche, on the ground that, at the time of its passing, there really existed no right of jurisdiction on the waters of the Mackenzie; and the 1 and 2 Geo. 4, ch. 66, could certainly claim nothing more, and might perhaps be unable to claim even as much. But even this concurrent authority appears to involve the self-same inconsistency with the Charter as that which has been already shown to have excluded the external jurisdiction from the chartered territories in general,—that fundamental document having prospectively planted, from the beginning, its own jurisdiction over the whole of the granted territory, though confessedly, in a great measure, neither possessed nor discovered. I subjoin the applicable passage:

* * " All lands, islands, territories, plantations, forts, forti-
" fications, factories, or colonies, where the said Company's
" factories and trade *are*, or SHALL BE, within any the parts
" or places afore limited, shall be IMMEDIATELY AND
" FROM HENCEFORTH under the power and command
" of the said Governor and Company." * *

21. Though this claim of a wider jurisdiction is not likely to be directly carried into effect, inasmuch as the heads of such districts, as lie beyond the Portage, can hardly be expected to assume the preliminary responsibility of sending offenders to be tried by this Court; yet the question may be raised, and ought as soon as possible to be raised before the tribunals of the neighbouring province; and every denizen of this vast wilderness of a world has a personal interest in releasing every part of the same from a jurisdiction so absurdly and inconveniently remote as to inflict inevitably on the

witnesses more grievous punishment than what perhaps the criminal himself may deserve.

22. Having thus considered our rule of decision, and the geographical range of our jurisdiction, I shall now endeavour to ascertain, who may be parties to any suit or action. On this point, the passage of the Charter which I have quoted speaks merely of defendants; doubtless presuming that, according to the dictates of common law and natural justice, every person may appear here as freely as elsewhere in the character of a prosecutor or of a plaintiff: and before going farther, I may add that the express provision of the Charter, with regard to defendants, namely, that they are to be such as live under us, is just as consistent with natural justice and common law, as is its tacit presumption with regard to plaintiffs and prosecutors. To offer one preliminary remark more, I propose to consider the subject of parties to a civil suit, separately and distinctly from that of parties to a criminal prosecution.

23. In a civil suit, no individual, whether a settler or a savage, whether a foreigner or a subject, is personally disqualified, as such, for resorting to this Court as a plaintiff; excepting that he never can recover judgment for the specific restitution of lands or houses situated beyond the limits of our judicial district. Even if lying within any other district of Rupert's Land, such property is not in our power; and if lying in any other country, it is not liable even to be regulated by laws identical with our own. I need hardly state the obvious exception, that the plaintiff, if his claim does not exceed five pounds, can take any defendant, who may reside within four miles of either river, only before the inferior Court of such defendant's own section of the settlement, as distinguished even from the municipal district.

24. Again, in a civil suit, no individual can be constrained to stand before this Court in the character of defendant, unless he has been regularly summoned within the limits of the judicial district, either by receiving the summons himself, or

by having the same left for him with a grown person at his ordinary dwelling. In the case, however, of an Indian, his liability to appear and answer as a defendant is necessarily subject to some important qualifications. If the plaintiff claim a debt under a contract, he incurs a considerable risk of being defeated by the inherent illegality of the transaction; and even where the transaction may not be vitiated by the violation of our fundamental law, every tribunal is, in justice and humanity, bound to give to a defendant, who is by comparison a child for life, the same exemption as if he really were a minor,—an exemption from the operation of every bargain that is not solidly advantageous to himself; or, in other words, an exemption from the payment of everything but really necessary supplies, furnished at reasonable rates. If, again, the plaintiff claim, not a debt under a contract, but damages for a wrong, the liability of an Indian defendant, must, in my opinion, be regulated by the same principles in a civil suit as in a criminal prosecution; the two things, however different in appearance, being intimately connected together in reality. If a wrong does not amount to a crime at all, then, of course, it can be the subject only of a civil suit but not of a criminal prosecution; but if it does amount to a crime, then it may be the subject of either or of both; excepting that, where the crime exceeds a misdemeanor, the civil suit, in order to prevent composition of felony, must not be begun till the criminal prosecution be closed. Though with respect to the higher class of crimes, this law is, practically, almost inoperative at home, where a conviction of felony ruins all whom it does not banish or destroy; yet here, where punishments are generally light and brief, it may beneficially be made to give private satisfaction to the injured individual, as well as public atonement to the outraged community. But to return to the case of an Indian defendant; you will now see more clearly, why his civil liability for a private wrong, as has already been stated, must be regulated by the same principles as his criminal liability for a

public offence; and the principles in question of this his common liability will be considered under the remaining subdivision of this head.

25. In a criminal case, just as in a civil suit, no individual, whether a settler or a savage, whether a foreigner or a subject, is personally disqualified, as such, for resorting to this Court as a prosecutor; and here, again, I need hardly state the obvious exception, that the prosecutor, if he sue for a local penalty of not more than one pound, can take any defendant, who may reside within four miles of either river, only before the inferior Court of such defendant's own section of the settlement, as distinguished even from the municipal district.

26. On the subject of criminal defendants in general, our jurisdiction varies according as the offence may have been committed in our own judicial district or in any other district of Rupert's Land. In the former case, we can lay a bill of indictment before the grand jury in the absence of the accused party, though we cannot proceed to trial before a petty jury without his presence; but, in the latter case, we can employ neither the one jury nor the other till the accused party has been placed at our disposal by the resident authorities of the proper district. You are, of course, aware that we cannot hear and determine offences committed beyond the limits of Rupert's Land; but, though we cannot try such offences, yet we may incidentally be required to take some cognizance of them in aid of other jurisdictions. If an offender against the criminal laws of England, or of Scotland, or of any other part of the British empire be found in our judicial district, we must, on our allegiance, assist ministerially, if required, in apprehending such offender to be conveyed to the scene of crime and punishment. But if an offender against the criminal laws of the United States take refuge among us, we are entitled and bound, before surrendering him under the Ashburton Treaty, to satisfy ourselves, by a kind of preliminary trial, *first*, that he is not a fugitive slave, guilty only of snatching the means

of escaping to this land of equal liberty; and *secondly*, that he is really liable to be convicted, both in law and in fact, before the ultimate tribunal. This auxiliary jurisdiction perhaps no other country in the world possesses in so remarkable a degree. When the contiguous wilderness of the United States is the scene of the offence, we may be bound, according to circumstances, to aid any one of the three jurisdictions of England, or Canada, or America. In every case, unless the crime, as such, be exempted from the operation of the Ashburton Treaty, America may claim our intervention; if the offender be a British subject, either America or Canada may require our help; and if both the offender be a British subject and the offence be murder or manslaughter, either America, or Canada, or England may demand our assistance.

27. From the consideration of defendants in general, I now come to that of Indian defendants in particular. The political position of the aboriginal tribes is not that of individual subjects, but of dependent communities, connected with the empire by what the writers on the law of nations denominate an unequal alliance,—the essential points of inequality being these, that they are not permitted to hold political intercourse with any foreign power, or to naturalize among themselves any civilized individuals, whether foreigners or subjects. But to explain this second point of inequality, these aboriginal nations do not necessarily consist of Indians alone: for, though they cannot naturalize strangers, yet a child of mixed blood, unless born in recognised wedlock, may, according to the subsequent circumstances of his life, be held, at least for many purposes, to have adopted either the civilized nationality of his father, or the savage nationality of his mother. For the present purpose, if not for every other, any half-breed members of an aboriginal community must be reckoned by us as Indians; and it is on this same principle that, in the neighbouring country, they sometimes, if not always, enjoy the poor privilege of sharing in the pittance

doled out to their tribe, when it is driven from the lands on which perhaps the bayonet has planted it, to another place of exile but not of rest. Here, however, the classification in question is comparatively of no practical importance. Though, on the one side of the international boundary, the half-breeds generally prefer the savage equality of the wilderness to the serf-like inferiority with which law and prejudice alike oppress them within the pale of civilization; yet, on the other side of the same line, they have almost universally embraced the proffered privileges of British subjects on this congenial spot, where neither prejudice nor law recognises any distinctions of colour, or origin, or race. We are all members of the same little community—a community in many respects the most interesting that the world has ever seen. We are all subjects of the same sovereign—a sovereign the mightiest and most illustrious on earth. We are all citizens of the same empire—an empire of matchless freedom, opulence, and renown. But, to return to the aboriginal communities: it is on this ground alone of separate and distinct nationality that we can recognise their chiefs as their representatives, though not provided with any special authority: for, if the Indians really were our fellow-citizens, we could not extend to them this indulgence without helping to split society into factions; however willing practically to acknowledge a leadership won by participating in toils and dangers, and by dispensing hospitality and bounty.

28. Now, though our criminal jurisdiction, as already defined, extends over all classes in general from the entrance of Hudson's Straits to the more northerly feeders of the Missouri, and from the Lake of the Woods to Portage la Loche, or perhaps to the mouths of the Mackenzie; yet, with respect to any Indian in particular, he must be held to be exempted, wherever and whenever he may act within the due limits of the nationality of his own tribe. When the natural incidents of open warfare are set aside, as not at all amounting to legal crimes,

such subordinate nationality must always give way to our supreme nationality, as often as the one comes into collision with the other; and this obvious and undeniable principle appears to afford an easy solution of every imaginable case. Under the law of nations, our every establishment, whether a solitary house or a populous settlement, plants our supreme nationality within the range of its ordinary operations; and, therefore, within such range, one savage has no more right to injure another, than a settler has to injure either of them, or than either of them has to injure a settler. If, however, Indians have been permitted, in a national capacity, to encroach on such range, whether for permanent residence or for temporary sojourn, they ought, in my opinion, to be exempted, with respect to each other, for petty offences committed within such limits as they may nationally occupy,—excepting, perhaps, when their chief has, either specially or generally, disclaimed in our favor his own national jurisdiction. Under the same law of nations, moreover, the most lonely traveller carries before himself and his property the broad shield of our nationality across and along the territories of the heathen; excepting, however, that the individual, who may be travelling in defiance of our laws, has voluntarily chosen to cast our nationality behind him, and to rely alike for protection and for redress against the savage on his own lawless arm. In this particular, the law of nations is not restricted to the intercourse of civilized states with barbarous tribes, but extends, though in a modified form, to the intercourse of civilized states with each other. Every community possesses the acknowledged right of avenging the wrongs, which its members may have sustained at the hands of any other community, either by public war or by private reprisals,—a right, by-the-bye, which is expressly vested in the Hudson's Bay Company by its Charter. Now such a right obviously comprises, what is far more consistent both with humanity and with justice, the lesser right of demanding, or, if necessary, of seizing, for the purposes of trial, any Indian,

who may have injured us even within the territory of his tribe. It might, however, be prudent to imitate, if possible, the civilized rule of previously requiring satisfaction from the nation of the offender, more particularly if the injury were such as to admit compensation; and even with respect to the gravest offences, it might still he prudent to leave the punishment, if likely to be adequate, in the hands of the tribe.

29. To come to the fourth subdivision of this head, namely the constitution of this tribunal, the Court of Governor and Council, in addition to the governor as its essential head and myself as its legal organ, comprises such members of the council as are justices of the peace. But it is only as councillors that the magistrates and myself sit; their peculiar duty, as magistrates, being limited to the municipal district; and my own peculiar duty, as Recorder, having reference to Rupert's Land. For judicial purposes, the whole council is inconveniently numerous; and, if a selection must be made, those members, who so ably and laboriously discharge the proper functions of a justice of the peace, are clearly best qualified for the task and best entitled to the distinction. But, if the magistrates, from any cause whatever, should be unable to attend in sufficient numbers, the governor would, of course, command the services of as many other councillors as might be required to supply the deficiency,—every councillor, on accepting office, having thereby pledged himself to enforce the laws, from the fundamental Charter of the country down to the latest local enactment.

30. On the important subject of juries, as an appendage of this Court, the Charter was altogether silent, and perhaps necessarily so, inasmuch as, till after many years, it could hardly anticipate, that there could be conveniently collected, within any district, a sufficient number of intelligent and disinterested individuals. But the aid of a jury, though not enjoined, was yet not prohibited; and, accordingly, in 1839, by the spontaneous desire of the Governor-in-Chief, the inhabitants at large of

Red River Settlement were entrusted with that best description of self-government, the practical dispensation of civil and criminal justice. For so inestimable a boon I gladly embrace this opportunity of stating that the community was exclusively indebted to Sir George Simpson: for, as I was myself unavoidably ignorant alike of the qualifications and of the dispositions of the people, I was inclined to deprecate the measure as perhaps premature. Sir George, however, felt confidence where I entertained doubts; and I soon found reason to believe that my doubts were wrong and his confidence right.—But the elevation of the people at large in the social and political scale is only the secondary recommendation of the system; its essential blessing being this, that it places the administration of justice above the very suspicion of partiality. In so limited a society, where every individual is so closely beset by the personal ties of blood or of marriage or of intimacy, one and the same set of judges, however uprightly and independently we might act, could not expect uniformly to convince the unsuccessful parties of our independence and uprightness in the weighing of evidence, the determining of facts, and the estimating of damages; more particularly as we should not be bound, like a jury, to arrive at an unanimous decision, and might thus, by the diversity of our own opinions, foster, or even elicit, the dissatisfaction of the loser. But from such surmises and uncertainties the verdict of a jury is, as effectually as possible, exempted. *First*, the proper officer does his best to bring together only such men as he believes to be wholly unprejudiced and disinterested: *secondly*, the parties themselves may make assurance doubly sure by challenging, with or without reason, in criminal prosecutions, or by putting preliminary questions, on oath if necessary, in civil suits: and *thirdly*, the whole body, so carefully selected and so rigidly sifted, must come to one and the same opinion on every point submitted to its consideration.

31. But in disclaiming, as I have done, for myself, personally, all merit in the matter, I have no hesitation in claiming

for the law, of which I had been appointed to be the first interpreter, the praise of rendering Sir George's enlightened and patriotic determination practically efficient. The respective provinces of bench and jury are these—that the bench declares the law, and the jury ascertains the facts; and though the bench is not required, like the jury, to be absolutely unanimous, yet the distinction between them, as just now stated, clearly involves the necessity, that the bench shall address the jury with one collective and harmonious voice. Now, a number of unprofessional men, however acute in intellect or cordial in feeling, could hardly expect, in the unavoidable absence of any common principles of knowledge and belief, to arrive, within any reasonable time, at so desirable a result; having first to disentangle the law, to be declared by themselves, from the facts, to be ascertained by the jury; and then to point out which of the facts ought to bear on the verdict, as distinguished from the damages, and which of them on the damages, as distinguished from the verdict. If such a co-operation had been attempted, its inevitable, though unintentional, effect would have been the mutual encroachments of the two bodies, the bench usurping the functions of the jury, and the jury usurping the functions of the bench. Thus would one of the two have been worse than superfluous, for each would, in a great measure, have relieved the other from the sense of responsibility; so that, at last, the abolishing of juries, at least, in civil cases, would have been hailed as a remedy; bad, indeed, in itself, but not so bad as the disease. But, gentlemen, let me not be misunderstood. Your excellent governor and magistrates, however impossible it might have been for them alone to give to the settlement the full benefit of the noblest birth-right of British colonists, Trial by Jury, perform an invaluable service to the cause of justice and order as the colleagues of a professional stranger, who, in the absence of legal practitioners and of a public press, ought to feel, and even to covet, the vigilant supervision of those who are

best fitted to appreciate and protect your private and public rights.

32. Thus, gentlemen of the grand jury, it is, through the introduction of law, strictly so-called, that yourselves and your fellow citizens have been raised to become, in the most important of all respects, the arbiters of your own destinies; and it is through the same free gift of the Honorable Company, that you enjoy the only true freedom, the privilege of being governed not by the wavering wills of living men, but by the inflexible impartiality of general rules written in the blood and sweat of the wise and good among your fathers. Though to men of information and reflection, such as those whom I have now the honor to address, there is nothing new in what I have just stated, yet, I well know, that very different opinions are industriously disseminated among the ignorant and unwary. It is to be ascribed to the law and to myself, as I am assured by an obliging friend, that debts cannot be collected, and that "rogues" cannot be punished; my correspondent, so far as I can understand him, referring to the strictness of the rules of evidence; in the face of the authentic fact, that such rules have never stood in the way of substantial justice, whether in civil suits, or in criminal prosecutions. Nor, in this respect, is the future likely to belie the past. The compliment of allowing "rogues" to escape with impunity, I hardly expected to receive from any quarter; and as I have not deserved it hitherto, so neither do I mean to deserve it hereafter. With regard to the debts, which interest my informant's sympathy, I need merely say that, if they are just in amount, as well as in principle, they have little to dread from a law, which, within the year, admits the creditor's books in his own favor, to be weighed, as evidence, by the jury, according to the regularity of the entries on both sides of the account.

33. Before leaving the subject of juries, I ought, perhaps, to add that, at home, petty offences are often tried in a sum-

mary way by justices of the peace. But this hasty jurisdiction, rests on grounds which have no place among us; such as that it has become absolutely necessary through the unmanageable amount of criminal business, and is rendered comparatively safe by the inevitable publicity of all the proceedings of even the humblest tribunals. Among us a similar jurisdiction would be as pernicious as it would be unnecessary. In the event of a conviction, the community, if it heard anything at all on the subject, would most probably hear fifty versions of the charge and half as many of the punishment, without a single syllable as to the actual proof of criminality; and in the event of an acquittal, the few might conclude that there had been a want of evidence and the many might imbibe crude notions as to the impunity of crime; while neither the many nor the few would be likely to contemplate the charitable alternative of the entire falsehood of the accusation. In a word, a summary jurisdiction among us would neither vindicate the law by making an example of guilt, nor satisfy that abstract justice, which is the foundation of all law, by publishing the proofs of innocence. To all these unavoidable results of the want of publicity must be added the more serious, though less certain, evil, that the less public tribunal would be more likely to crush unpopular innocence or to screen popular guilt.

34. In criminal prosecutions, to the consideration of which I shall now confine myself, the law demands the aid of two juries, the grand and the petty, the latter consisting of twelve men, and the former containing any number not less than twelve and not greater than twenty-three. The petty jury, which tries the question of guilt or innocence in the presence of the accused party, must, as you all know, be unanimous: for the law humanely permits the steady doubt of one juror to operate to the prisoner's acquittal, in the face of the opposite belief of his eleven associates. The grand jury, on the contrary, decides according to the opinion of any twelve, who in a body not exceeding twenty-three, must always be a majority;

so that, it is never required to be unanimous, unless when twelve only are present. Its special duty, as I have already had occasion to hint, is merely to determine whether there be sufficient ground for sending any person to be tried before a petty jury. Clearly, therefore, it neither requires, nor admits, the presence of the party accused; and, as clearly too, it neither requires nor admits any other evidence than that for the prosecution. To this evidence for the prosecution a grand juror cannot in general apply a sounder test than by asking himself the question, whether he would, if he were on a petty jury, convict the party on such evidence in the event of its being unanswered and unshaken. If his conscience should reply to such question in the affirmative, then is he bound on his oath to join in finding "*a true bill*;" but, if his conscience should reply in the negative, he is not necessarily bound to join in finding "*not a true bill*," inasmuch as the party, when put on his trial, may confess his guilt, or even his own witnesses, as we have sometimes seen in this Court, may furnish stronger testimony against him, than those of the prosecutor. But the two possibilities in question ought not to have any weight, unless the grand juror is morally convinced by the evidence for the prosecution that the accused party is really guilty; and, even without reference to such possibilities, a grand juror's opinion must generally rest rather on moral than on legal grounds, for he deliberates with his colleagues in the absence of judicial supervision or of professional advice. But beyond this there may be reasons of policy for not finding "*a true bill*," even when one is morally convinced of its truth. A suspected person, though he may have escaped from one grand jury, may yet be brought before another and another; while, if acquitted by one petty jury, he is free for ever, in spite of any additional evidence that may transpire, and in spite even of his own subsequent confessions: and a grand juror, therefore, should at all times qualify his merely moral belief by such a consideration, wherever he may have reason to think

that any insufficiency of legal evidence may be remedied by delay.

35. This exposition of your principal duty, will show you that, in point of fact, a grand jury is really needed only where the evidence is doubtful, and where the charge is so grave and important as to entitle the accused party to the benefit of all the forms and defences of the law. From February, 1840, to November, 1844, inclusive, no such case arose; and this Court could hardly have felt justified in drawing twenty-three respectable men from their ordinary vocations to enter on preliminary enquiries, which were obviously superfluous. In Beardie's case of November, 1839, as well as in the Indian case of to-day, the verdict of the coroner's jury might, on general grounds, have allowed the Court to dispense with your attendance. But, in Beardie's case, the preliminary verdict of manslaughter would necessarily have led to an unqualified acquittal: for the deed, if a crime at all, was wilful and deliberate homicide; and by obtaining from the grand jury a true bill to that effect, the petty jury was enabled to temper the dictates of law with the pleadings of compassion, by acquitting the boy of murder, by reason of his years. Again, in the present case, though the preliminary verdict is not liable to the same technical objection, yet it has perhaps not proceeded from so full a consideration of so important a charge as ought to precede the final trial; and, as a general rule, coroner's jurors, with the mangled and, perhaps, still warm body of a fellow creature before them, would be something more, or something less, than men, if they did not give way to impulses incompatible with patient inquiry and dispassionate consideration. A coroner's inquest, however, is an admirable means of collecting evidence on the spot, while the corpse is still sound, and the facts are still recent; and, in this respect, the zealous and eloquent pastor, who, as I am glad to see, continues to discharge the duties of coroner, is entitled to the warmest thanks of the Court and the community.

36. I have thus, gentlemen of the grand jury, prepared you for the special duties of to-day, at much greater length than I at first intended. The subject gradually grew under my pen, till, at last, I was induced to think, that my labours might possibly have a value beyond the uses of the immediate occasion; and the possibility of such a result, again prompted me to still fuller discussion, particularly with regard to such exceptions and qualifications, as unprofessional hearers could not have been expected to supply for themselves. My address, however, would have been longer, if I had not written it; and even my composition would have required to be more diffuse, if I had not resolved to send my manuscript with you to your own room.

37. Having thus prepared you, as I have just stated, for your special duties, let me now draw your patient attention to the single case that is about to form the main subject of your deliberations, the alleged homicide of an Indian woman by an Indian man, within the limits of Red River Settlement. So far as the nationality of the parties is concerned, the locality of the offence places our jurisdiction in the matter beyond a doubt; so that you have merely to consider whether any homicide be established by the evidence; and whether the homicide, that may be so established, be murder or manslaughter. Now, though the first point, as a naked matter of fact, falls entirely within your own province; yet the second point, as comprising not merely fact, but law, appears to demand from me a few explanatory observations.

38. Homicide, if at all criminal, must be either murder or manslaughter. It is murder if committed with malice; and it is manslaughter if committed without the same. So far the inquiry would involve merely a matter of fact, if the law did not interpose with something more than a popular definition of the distinctive malice in question. Of the influence of this legal definition, Beardie's case, which was just now mentioned, would afford us perhaps the best example on record. One boy

directed against another a deadly arrow, within a deadly distance, and with a deadly aim. Now, though every juror and every judge doubtless saw in this action merely a great degree of boyish thoughtlessness, yet the law, at least as a general rule, necessarily inferred malice, from so voluntary and effectual an application of fatal means to a fatal end; and nothing saved Beardie from a verdict of murder but the law's special limitation of its own general rule to the comparatively mature age of fourteen. Malice, when it is obvious to the senses, is said to be express; but when it is inferred by the law it is said to be implied. Of the former the jury is the judge; but the judge of the latter is the bench. Now, the law always implies malice, unless the crime be reduced by the evidence to one or other of the two subdivisions of voluntary and involuntary manslaughter. Homicide is voluntary manslaughter when it is committed in heat of blood caused by adequate provocation; and it is involuntary manslaughter when it is committed through accident in the execution of an unlawful act, which does not in itself amount to felony. In the case of voluntary manslaughter, the law extends a reasonable indulgence to human infirmity; but, in the case of involuntary manslaughter, every penal enactment, however in other respects it may appear to be a dead letter, fortifies itself with pitfalls, which its violators may find to be more formidable than its direct and positive sanctions.

39. If, after this exposition, the evidence may leave you still in doubt as to the classification of the homicide which you are now to consider, your better course will be to return an indictment of murder, because such indictment may, under the direction of this Court, be mitigated by the petty jury into manslaughter, whereas an indictment of manslaughter cannot, in a similar way, be aggravated into murder. In fact, where the grand jury indicts for murder and the petty jury convicts of manslaughter, both juries may be equally correct in their respective decisions: for, as the law presumes all homicide to be murder till the contrary be proved, the palliating circumstances

are of course often elicited from the prisoner's witnesses, who, as I have already mentioned, can appear before the petty jury alone.

40. But, you, gentlemen of the grand jury, may not return any indictment of homicide at all; or, if you do return one, the gentlemen of the petty jury may acquit the prisoner of homicide in its every shape; and to provide against either of these contingencies, the proper officer has prepared such a bill of indictment for a minor offence as will hardly involve any doubt or difficulty within your peculiar province. The second bill of indictment in question is for an attempt to murder; and I shall add a few observations, in order, if possible, to render the law of the case as clear as the facts seem to be certain. Though a man cannot be tried a second time before a petty jury under a legal charge of which he has once been acquitted; yet he may, in effect, be tried twice, or possibly oftener, under different legal charges arising from one and the same criminal act. To take homicide as an instance,—if the petty jury could not at once mitigate an indictment of murder into a verdict of manslaughter, an acquittal of the former charge might still be followed by a trial for the latter, inasmuch as the homicide, though declared not to have been wilful, might still be criminal; and in the same way an acquittal of homicide still leaves open any charge that may be founded on the preceding scenes of the tragedy. Now every attempt at any crime whatever is itself a misdemeanour, punishable, in all cases, by fine and imprisonment, and, in certain aggravated cases, by whipping also and the pillory. Nay, so rigorously does the law adopt the popular maxim, which prefers prevention to cure, that it classifies together the attempt actually to commit the crime and the attempt, however unsuccessful, to induce another to commit it. With respect to two offences in particular, this provident vigilance of the law is the best, or rather the only guarantee for private security and public tranquillity. If, in a case of perjury, the party swearing falsely could alone be

punished, every man's property, every man's liberty, and every man's life would be at the mercy of such as might have the craft to suborn, but not the courage to perpetrate the crime; and if, in a case of sedition, the prime movers could not be reached through all their screens of worldly wisdom, the law would but ill discharge its duty either to the peaceable victims of insubordination, or to the deluded and misguided instruments of cunning.

41. If the prisoner, whether you find homicide or only an attempt at the same, should appear to have been in a state of intoxication, this circumstance will demand your serious consideration. Drunkenness, unless involuntary on the part of the offender, is never received by the law as a palliation of the offence for this plain reason, lest intending criminals may, by anticipation, wash out the deeper dyes of their guilt in the same stream that is to drown their reason. In fact, drunkenness, though I have never seen the point so stated, is likely even to aggravate, in the eye of the law, the offence of slaying a human being. To reduce criminal homicide to voluntary manslaughter, it must, as I have already mentioned, have been committed in heat of blood caused by adequate provocation; but, as the blood, which is already boiling with injected fire, will hardly wait for what would be adequate provocation to more temperate veins, the drunkard might be convicted of murder under circumstances which would render a sober man guilty merely of manslaughter. Again, an accident, which may be innocent in a sober man, may yet, at least on general principles, be involuntary manslaughter in a drunkard, inasmuch as drunkenness is itself a legal crime; and, in truth, accidental homicide, if committed in a state of intoxication, ought to be reckoned not involuntary manslaughter, but wilful murder, for the same plain reason as before, lest drunkenness may be deliberately made the cloak of malice; and clearly must be so reckoned, where the alleged accident is of such a nature as to be rather the consequence of the drunkenness

than its concomitant; such, for instance, as throwing one down a precipice by staggering against him.

42. Farther, if the woman should appear to have been intoxicated as well as the man, the probability of his guilt will be lessened in proportion to her inability to guard against the treachery of her own limbs and the severity of the weather; and in either case the tragical event must be mainly imputed to the influence of liquor.

43. This leads me, gentlemen, to discuss the higher and more independent branch of your duty, the presenting of any breach of the criminal law, even where the proper officer has not laid before you a bill of indictment. You are, in fact, the grand inquest of our judicial district, for, in this respect, you cannot look beyond its borders. When you indict at the suggestion of another, you are merely the auxiliary and minister of this Court; but when you present of your own accord, you rise to the rank of its monitor and guide. It is customary, however, for the Court to offer general hints as to the objects of your superintending care; and I therefore add that, in this capacity, you possess, for the time, the right of presenting not only actual breaches of the criminal law, such as the selling of beer to Indians, but also all dangerous practices, such as the entrusting of loaded arms to children; and, farther, of examining the machinery of our penal jurisprudence, such as the gaol and the police, and of reporting how far the same may be working in accordance with the requirements and necessities of the applicable enactments. But, as hasty opinions are more likely to do harm than good, I deem it expedient to warn you, unprepared as you of course are for the discharge of new and unknown functions, that you ought not to yield at all to the unpremeditated impulse of the moment, or to decide even any familiar point without the greatest caution and circumspection; and, as a matter of convenient arrangement, I must suggest to you the propriety of returning the bill of indictment, whether found or not found, before you allow

yourselves to be entangled in any more general discussion whatever.

44. Of all the topics which I have suggested, beer-selling alone would appear to require any explanation; but I should not enter on the superfluous task of enlarging on its impropriety before so intelligent and respectable an audience, were not the beer-dealers uniformly disposed to impugn the prohibition as iniquitous; and, to vindicate the traffic as innocent, to calumniate the law as well as to violate it.

45. Now, while giving to the beer-dealers, as I am bound to do, full credit for perfect sincerity, I am equally bound to tell them, that they have mistaken their remedy. If one individual may practically prefer his own notions of justice to the clear dictates of law, why may not another do the same. Again, if every individual do so, what is this but the despotism of will over duty; the triumph of anarchy over order; the snapping asunder of all the bonds that hold society together? But, even in its more certain and immediate consequences, the habitual infringement of any law is a wilful fraud on those who systematically obey it. To attain the benefits of social life and regular government, every individual sacrifices a portion of his natural liberty, not necessarily because he himself might abuse it, but because others might do so: for it is an inevitable condition of civil security that the offences of knavery lead, in a greater or less degree, to the coercion of honesty; and if others persist in reserving what he himself has surrendered, he is, of course, so far defrauded of the expected price of his own personal sacrifices. The true remedy of the beer-dealers for the alleged grievance is to present a petition to the Governor and Council of Assiniboia for the repeal of the obnoxious regulation, setting forth the hardship of being forbidden to avail themselves to the full of the superabundant riches of the soil, and the inferior intellects of its ancient lords.

46. In maintaining that even a bad law, while it exists at

all, ought to be obeyed, I readily admit that it ought not to be allowed to exist one moment beyond the earliest opportunity of lawfully annulling it; and, so far as I am concerned, I shall never vote for any regulation which I cannot prove to rest on some foundation stronger than the mere fact of its existence, or the mere will of a majority. But, so far from wishing the beer-dealers to interpret this general concession in their own particular favor, I shall now proceed briefly to examine their opinion, solely because I am most firmly persuaded that they themselves will recoil from the truth as soon as they see it,—a persuasion, which, with regard at least to some of them, I base on my own experience of the respectability of their general characters, and the uprightness of their general transactions.

47. Their only argument I believe to be this, that the beer-drinker, and not the beer-seller, ought alone to be held responsible for all the external evils of his drunkenness. Speaking merely of human laws, which regard not the sin but the crime, I am quite ready to admit that this argument is unanswerable, and irresistible in its general application to civilized men; and I am also quite ready to admit that the beer-dealer's argument may be honestly framed and honestly urged, with an erroneously exclusive reference to suit its general application. But, though the defence be legally good and valid with respect to the civilized purchaser, who may buy without drinking, and may drink without being drunk, and possibly even without wishing to be so; yet it is utterly weak and worthless with respect to the reckless barbarian, to whom, from his uncontrollable desires and his susceptible constitution, drinking and drunkenness are as necessarily connected together as flame and combustion. In the general case, therefore, of civilized men, drunkenness is at most only probable; but, in the particular case of the Indians, absolutely inevitable; and, even if it were equally certain in both cases, the more serious consequences of the drunkenness of a savage—

consequences almost as certain as the drunkenness itself—would still justify the law in visiting the one case with penalties and in passing the other with impunity. As the topic is one of deep, extensive, and durable interest, I shall subjoin to these undeniable generalities a more detailed view of the effects of which the beer-dealer has been shown to be the cause; and I feel confident, and trust to make you feel equally so, that any beer-dealer, who may still continue morally to justify his illegal course, must have debased other faculties than those of his untutored victims.

48. To begin with his neighbours, the beer-dealer is deficient in that kindly courtesy which forms the sweetest, and perhaps the strongest, bond of social life; while, by putting himself in their power at the same time that he outrages their feelings and tramples on their interests, he unconsciously gives them credit for the very quality of neighbourly forbearance which he has banished from his own breast. When viewed in this light, even he himself cannot consider as venial the habit of letting loose on his acknowledged well-wishers the generally armed creatures, whom he has drugged into fury, as objects of terror and instruments of violence.

49. To pass from his neighbours in particular to the settlement in general, the beer-dealer stretches his self-interest to overlay all the obligations of political duty and social fellowship, endangering the public tranquillity for a few pence, and peradventure taxing, as in the present instance, the time of each of fifty of his fellow-citizens to an amount greater than that of his own miserable gains. But against the settlement, as the destined centre of a vast circle of civilization, the beer-dealer is guilty of a still higher misdemeanor: he does his best to defeat the benevolent object of its noble founder, whose single-hearted enthusiasm it was to make the wilderness glad, and to see the desert blossom as the rose. Of his proceedings it is the unholy tendency to poison the promised blessing in its very springs, by training the red man before-

hand to pervert agriculture, the best human aid of his moral and physical improvement, into the actual means of darker degradation and deeper distress.

50. Though on purely religious grounds I cannot enter without trespassing on the province of gentlemen much better qualified for the task than myself, yet I may refer more openly and more boldly than their modesty ever refers, to the debt of pious gratitude which this settlement owes to the benevolent associations that shed on you and on your children, without money and without price, the rich ministrations of the gospel of peace. To pass with this general notice the exertions of Catholic philanthropy, as not falling minutely within my knowledge, the Church Missionary Society, during a period of more than twenty years, has not only supplied the Protestant places of worship with able and zealous clergymen, but also been the essential, if not the exclusive, means of dispensing among the Protestant youth the light of education; thus diverting, for the special benefit of old and young, funds contributed by the humane and charitable for the conversion of the heathen; and on the part of the Protestant beer-dealer, it is an equally unthankful and inconsistent return for the peculiar regards of that association, and for the self-denying sacrifices of its members, to rob its proper nurselings of their glimmering twilight of reason, and thus to disqualify them still more for appreciating and accepting the mingled gifts of civilization and Christianity.

51. With respect to the Indians themselves, the beer-dealer cruelly injures those, whom, both on general and on special grounds, he is bound to regard with a compassionate interest. In comparison with himself they are mere children, legally as well as equitably entitled to the minor's privilege of being defended or delivered from the seductions of covetousness; and their blood, if it does not flow in his own veins, generally flows in the veins of those who are nearest and dearest to himself. In spite, however, of these considerations, the beer-

dealer tears from the red man the scanty fruits of his reluctant labour, ingeniously rendering his barbarism more barbarous, through one of the essential instruments of civilization; he does his utmost to make the hungry and naked wanderer more naked and more hungry; and he aggravates the inherent miseries of a homeless life, by divesting his victim at once of raiment and of understanding, by depriving him, in a word, of all that distinguishes the savage from the brute. Besides all this, the beer-dealer is morally accountable, and, perhaps, legally so, to society for his besotted dupes' violations of the law; and whatever, in the present case, may be the judicial opinion of bench or of jury, every farm that may, after this poor woman's untimely end, continue to drench the unhappy Indians with its moral and physical poison, will, before a higher tribunal, be registered as a field of blood, and assigned at the owner's death to his posterity with all its curses on its breast.

52. This anticipation needs not the eye of prophecy. Even to the eye of sense there has already gone forth a similar decree of the Watchers; and every thoughtful man among you, must even now see the beer-dealer, as the unconscious tool of retributive vengeance, himself directing against his own offspring, the preparatory thunderbolts of the Almighty. By permitting his children to be the witnesses, and, perhaps, the instruments of his own evasive avarice, and of his victim's reeling abasement, he voluntarily exerts a father's paramount influence to sow in their susceptible minds, the opposites of sobriety, humanity, and candour. How similar and yet how different was the conduct of one of the gentile tribes of antiquity. Sparta, a celebrated state of Greece, used to intoxicate her slaves, in order to inspire her heathen youths and maidens with a scornful horror of intemperance, thus palliating the wantonness of the injury by the loftiness of the motive; but the beer-dealer sells out by stealth an humiliation more cruel, in proportion to the now higher and holier uses of an un-

clouded understanding, with the view of teaching his Christian sons and daughters that drunkenness in its most loathsome form, so long as it has a shilling or a rag to tempt cupidity and reward artifice, is one of the useful virtues. Sparta, though she knew nothing of Solomon, yet educated her progeny according to his well-established maxim; but the beer-dealer draws from a book older than the Bible—the book of national and domestic experience—the still better established maxim, that, if a child be trained up in the way in which he ought NOT to go, he will not, when he is old, depart from the same.

53. If these faintly-coloured lines of a horrible picture fail to make the requisite impression on the beer-dealer's nobler feelings, there still remain arguments of more tangible character and more immediate force.

54. Though the express penalties of the municipal regulation may be turned aside, through the unmerited and unrequited silence of indulgent neighbours, yet the indirect consequences of a violation of the law, which are far more to be deprecated, hang by an invisible thread over the most valuable of the beer-dealer's interests and rights. If robbed by any Indian who had been the victim, or the witness, of the wretched traffic, the beer-dealer would most probably be deterred from prosecuting the robber by the dread of legal retaliation; but if robbed by any Indian who was at the time affected by his potions, he would be similarly deterred by prudential sentiments and motives, which would be strong and weighty, even if there were no municipal regulation in existence. But so closely is the path of the lawless beset by the toils of the law, that connivance would be more dangerous than prosecution. I allude not to the moral influence of an example, which would virtually outlaw all property that might be tainted by the leaven of the red man's spoils; I allude to the legal fact, that to sell impunity to a felon, whether for money or for money's worth, amounts to the grave misde-

meanor of composition of felony—a misdemeanor punishable by discretionary fine and discretionary imprisonment. Nor is this all: the beer-dealer not only thus becomes the sole guardian of some of his own rights, but also, to a certain extent, pledges his interests as his victim's surety with respect to the rights of other men. If the drunkenness were involuntary, and the crime immediate, then, in the eye of law as well as of reason, the beer-dealer would be the criminal and the Indian merely his instrument; and if the drunkenness were voluntary and the crime remote, even then, provided the jury were satisfied that drinking and drunkenness were one and the same thing to an Indian, the beer-dealer would be liable, in pecuniary damages, for the outrages of the being whom he had divested of understanding, but not of strength; whom he had deprived of the means of seeing the right, but not of the means of doing the wrong; whom he had robbed of the capacity to control himself, but not of the power to injure others. Though the books tell me nothing expressly on this subject, yet they unanimously hold that the owner of a vicious horse is responsible, in one way or other, for all that the animal may do through his carelessness or wantonness; and the beer-dealer, of course, is still more decidedly responsible for the actions of an irrational creature, that he has not only let loose to destroy, but deliberately armed with the weapons of destruction..

55. To offer, beyond my first intention, a few remarks on the subject of distillation, I am in justice, bound to begin by admitting, that this correlative offence rests, in a moral view, on very different grounds. The regulation, which the beer-dealer violates, prohibits the intoxicating of Indians with any substance whatever; but the regulation which the distiller violates, prohibits merely the manufacturing of a certain species of intoxicating liquor. But of this comparatively creditable distinction, the distiller can avail himself only when he distils exclusively for domestic consumption; if he bring his whiskey into the market, he clearly incurs the risk of indirectly

co-operating in the infringement of the more important regulation. But, under any circumstances, whether he distils for his own family or for the public at large, his offence, in its legal aspect, is more deliberate and audacious than that of the beer-dealer, inasmuch as it commences with the very commencement of the process, and is not necessarily committed under the trying influence of a visible and tangible bribe. Thus far, therefore, the general position of the distiller is not so much superior to that of the beer-dealer as is commonly imagined; and, on a deeper scrutiny, the moral advantage, which, after all, must be restricted to such distillers as do not sell, has, I fear, brought several respectable individuals to the verge of an offence, far more serious than the violation of all our municipal enactments put together.

56. Though, in prosecuting a confessedly unpopular traffic, the beer-dealer's only reliance is on the difficulty of proving his offence; yet the distillers, trusting, forsooth, to the inherent innocence of their forbidden trade, are confidently reported to have combined to resist by force the execution of the law. For many reasons, I cannot believe that men who have such a stake in the country, as all those must have, who have anything to distil, can have actually entangled themselves in the highly penal crime of conspiracy,—a crime which is not the less punishable, however it may be meant merely as an argument for the repeal of the obnoxious law. That the respectable individuals in question may have talked loosely among themselves on the subject, I can easily believe: for in this country, as in almost every other, any project that has not better reasons to support it, is always backed, in its own imagination, by some dangerous phantom or other to alarm and dazzle and convince. But even such talking, if not legally criminal, is at least morally so, as tending, both directly and indirectly to undermine the foundations of peace and order,—foundations in whose stability, every permanent resident in the country, however poor and humble, has a deeper interest than myself. If men

wish to be free, they must not only obey the law themselves, but must by all lawful means prevent others from disobeying it,—every man's own obedience being the price of that freedom which the obedience of others alone can secure. But to return to the distillers; selfish discontent is the more culpable on the part of those, whose sole grievance it is, that Providence has blessed them with more than man will allow them to destroy, when contrasted with the self-denying cheerfulness of their less fortunate brethren, who, through the happily rare coincidence of a bad hunt and a bad harvest, are now enduring the most severe privations with the most heroic fortitude.

57. If the duty of obeying the law is to bear any proportion to the value of what the law protects, then must such duty be peculiarly binding on the citizens of Red River Settlement. Their lot has been cast in a land, in which industry is more independent than in any other of the accidents of fortune; and in which idleness is, in a great measure, exempted from the miseries, and placed above the temptations of less favoured climes; in which the savings of economy, when prudently employed in trade, yield almost unexampled returns; and in which even want, when it does come, is not aggravated by those artificial feelings, which elsewhere embitter the evils of poverty through the shame of disclosing them. Such of you, as occasionally read the newspapers of the distant world, must see for how much you have to be thankful, and of how little you have to complain, possessing nearly all the happiness of civilized life, with the smallest possible alloy of its toils and its cares. In a word, you enjoy, almost as freely as air and water, the blessings for which God's chosen people prayed as the covenanted reward of national obedience; and it has often struck me that the beautiful petition of David, while, at the lowest ebb of his fortunes, he was fleeing from the face of his rebellious son, embodies a true picture of your enviable condition.

58. When I see your healthy and comely families nestling in wedded life around you almost as closely as the hen gathereth

her chickens under her wings, I may well repeat: "Your sons grow up as the young plants, and your daughters as the polished corners of the temple." When I ride between your almost spontaneous harvests and your untended flocks, I may again exclaim: "Your garners are filled with all manner of store, and your sheep bring forth thousands and ten thousands in your streets." When I observe your gigantic cattle lending their patient strength to your ploughs and again replacing the loan out of the cheap pastures of your plains, I may still ejaculate: "Your oxen are strong to labour, and there is no decay." When I consider, that you know war and bondage only as the scourges of other lands, I utter the words of the Jewish monarch in the proud and grateful spirit of a British subject: "There is no leading into captivity, and no complaining among you." When I reflect that, through the pious bounty of Europe, you are peacefully basking in the beams of a far brighter dispensation than that which the Jews were commanded to purchase with their labour, and obliged to defend with their lives, I echo with tenfold force the closing summary of the royal psalmist: "Happy are the people that are in such a case; yea, blessed are the people that have the Lord for their God."

END.

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